the injury should be established by an eye-witness other than the insured. *Held,* such a provision is void, because it attempts to govern the law of evidence. *Rollins* v. *Business Men's Acc. Ass'n* (St. Louis Ct. of App., Mo. 1920) 220 S. W. 1022.

An agreement wherein the parties stipulate concerning the manner of establishing a cause of action in such a way as to require direct proof where circumstantial evidence would otherwise be sufficient is of no force. *Utter* v. *Travellers' Ins. Co.* (1887) 65 Mich. 545, 32 N. W. 812. When, however, the parties contract that no action shall be maintained after the expiration of a certain time, the stipulation is valid. *Cray* v. *Hartford Fire Ins. Co.* (C. C. 1848) 1 Blatchf. 280. The distinction seems to be that in the former case, the agreement goes to the manner of proof at the trial and governs the rules of evidence, whereas in the latter case, the agreements are by way of conditions which are satisfied before or at the time of filing suit, and hence have nothing to do with the laws of evidence. The court in the instant case pointed out (p. 1026) that the provision is not one which attempts to fix a condition under which the insurer "will become liable for a certain amount or for no amount but is attempting to fix the amount of evidence or the character of evidence which must be shown before such a condition can be pronounced as having existed." When the existence of a claim is sought to be established by methods provided for in an agreement as in the instant case, not only do the parties attempt, in effect, to be a law unto themselves, but they might stipulate for absurd provisions, such as to require a witness with red hair or blue eyes, and the like.

EVIDENCE—MOTION TO DISCHARGE IN CRIMINAL CASES—WAIVER BY INTRODUCTION OF EVIDENCE.—The defendant, on trial for a statutory offense, moved to be discharged at the conclusion of the state's evidence. The motion was denied and after having taken an exception, the defendant proceeded to introduce evidence. *Held,* the error, if any, in denying the defendant's motion, was waived by the introduction of evidence in his behalf. *Wukina* v. *State* (Ind. 1920) 128 N. E. 435.

The instant case is in accord wtih the prevailing rule on this point. *Hodson* v. *United States* (C. C. A. 1918) 250 Fed. 421; *State* v. *Chafin* (1916) 78 W. Va. 140, 88 S. E. 657; *People* v. *Slaughter* (1913) 182 Ill. App. 612. That the defendant's evidence may cure defects in the government's proof is a strong reason for urging this rule. The opposite view is maintained on the ground that this evidence should not be used against the defendant since he had the right to have his motion decided without it. *State* v. *Bacheller* (1916) 89 N. J. L. 433, 98 Atl. 829. The difficulty with the rule of the instant case is that it comes dangerously near to compelling the defendant to prove his innocence before the state has really made a case from which his guilt could be inferred, or else to forego at his peril a defense on the merits, if he wishes to test the accuracy of the refusal of his motion to dismiss. This rule also permits isolated pieces of the defendant's testimony to be used against him to cure defects in the case for the prosecution. See *People* v. *Crane* (1917) 34 Cal. App. 760, 168 Pac. 1055. And yet the rule in the *Bacheller* case, if followed to its logical conclusion, might lead to this undesirable situation: a criminal whose guilt had been clearly, though perhaps inadvertently, proved by his evidence, would have to be discharged because the state had failed in the first instance to make out a sufficient case against him. The failure of justice that would result in such a case justifies the majority view.

EVIDENCE—UNLAWFUL SEIZURE—FOURTH AMENDMENT.—A government revenue